IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8605 of 1999

with

MISC. CIVIL APPLICATION No 2220 of 2003
in
SPECIAL CIVIL APPLICATION No 8605 of 1999

with

CIVIL APPLICATION No 7732 of 2003
in
SPECIAL CIVIL APPLICATION No 8605 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER

Versus

KRUSHNAKANT RATILAL SHAH

Appearance:

1. Special Civil Application No. 8605 of 1999

MR KM PARIKH for Petitioner No. 1

MS PARAGI K PARIKH for Petitioner No. 1

MR PH PATHAK for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 04/12/2003

COMMON ORAL JUDGEMENT

#. This Court has first taken up Misc. Civil Application No.2220 / 2003. Heard learned advocate Mr.K.M.Parikh on behalf of the applicant - original petitioner - Corporation and learned advocate Mr.P.H.Pathak for the respondent workman. This Court has passed the order on 12th November, 2003 in Special Civil Application No.8605 / 1999 dismissing the matter in default and therefore, present application is filed to recall the order passed by this Court and restore the main matter with all reliefs. For the prayer sought for in this application, learned advocate Mr.P.H.Pathak has no objection if the same is allowed. Therefore, considering the averments made in the application as well as submissions made by both the learned advocates for the parties and considering no objection accorded by the learned advocate Mr.Pathak, present application is allowed and as a result thereof, the order passed by this Court on 12th November, 2003 is recalled and the main matter is restored to it original relief with all reliefs.

In view of above observations and directions, present application is disposed of accordingly.

#. So far the main matter i.e. SCA No.8605 / 1999 is concerned, it is restored to the original file by this Court today while passing the order in Misc. Civil Application No.2220 /2003 . At this stage, learned advocates for the parties have requested this Court to take up the main matter for final hearing. Therefore, considering the request and the consent of the learned advocates, this matter is taken up for final hearing today.

#. The petitioner Corporation has challenged the award passed by the labour court, Amreli in Reference No.245 / 1994 [New Number : 329 / 1998] dated 1st May, 1999 wherein the labour court has set aside the termination order dated 29th March, 1980 and granted reinstatement with continuity of service and full backwages with effect from 1.1.1990.

Initially, this Court has issued Rule and granted

interim relief in terms of para-10[C] on 1st November, 1999 and that is how the award in question has been stayed including reinstatement of the workman. Affidavit-in-reply has been filed by the respondent workman before this Court against the present petition.

#. Learned advocate Mr.Parikh appearing on behalf of the petitioner Corporation has submitted that Reference is bad itself because it was raised after four years from the date of termination. He also submitted that the respondent workman was appointed for a period of one year on probation with effect from 30th March, 1979 and during this probation period, his work was not found satisfactory and therefore, according to the Rules, his service has been terminated on 29th March, 1980. Thereafter, he raised the dispute after a period of four years and therefore, there is no stigma against the workman alleged by the petitioner corporation and for that, no departmental inquiry was necessary and even no retrenchment compensation was required to be paid and therefore, the Corporation has rightly passed the order which is legal and valid and therefore, the labour court has committed gross error in interfering with the order of termination and granted relief. Learned advocate Mr.Parikh has also submitted that after Reference has been referred to for adjudication to the labour court, the respondent workman has filed statement of claim on 8th February, 1995. He also emphasised that on what basis, the labour court has granted backwages with effect from 1990 and as such, there is no reason has been given by the labour court. In short his submission is, the labour court has committed gross error in coming to the conclusion and passing the award in question.

#. Learned advocate Mr.P.H.Pathak appearing on behalf of the respondent workman has submitted that the respondent workman was working with the petitioner corporation and he was appointed on 5th May, 1978 and remained in service upto 30th March, 1979 and thereafter, he was taken on time scale and then he remained in service upto 26th March, 1980 and thereafter his service has been terminated without following the procedure in law. He also submitted that as per the termination order, his work was not found to be satisfactory and therefore, the stigma is attached and mentioned in the termination order which requires at least some reasonable opportunity to the workman before terminating service of the workman. He also submitted that in respect of the allegations that the work of the respondent is not found satisfactory. That one chargesheet is also received by the workman even though not complying with the inquiry, termination order

has been passed, that amounts to ignoring and avoiding the departmental inquiry against the workman. He also submitted that even probationer's service has been terminated without even stigma, then it amounts to simple case of termination, requiring retrenchment compensation to be paid and case falls within definition of Section 2[oo] of the I.D.Act, 1947. Therefore, it is not disputed that at the time of termination, Section 25-F has not been followed by the petitioner Corporation and that is how also, the order of termination is bad. That the order of appointment on probation was issued after one year service completed by the workman because he was appointed on 5th May, 1978 and that fact was believed by the labour court in favour of the workman. Therefore, according his submission, the labour court has rightly granted relief while setting aside the termination order. He also submitted that the labour court has rightly granted backwages with effect from 1990 and therefore, no interference is necessary while exercising the extra ordinary powers of this Court.

#. I have considered submissions made by the learned advocates for the parties. The finding given by the labour court on the basis of the evidence which starts from para-13. The labour court has come to the conclusion that the workman was appointed on 5th May, 1978 and he was taken on time scale on 30th March, 1979 by Divisional Establishment order No.197 / 1979. Thereafter, chargesheet was served on the respondent workman while working at Una Depot and he refused to work as per the order passed by the Depot Manager, Una. But that chargesheet remained as it is and no departmental inquiry was initiated by the petitioner Corporation in respect of the chargesheet. Ultimately, on 26th March, 1980, service of the petitioner was terminated. The workman was on leave for 15 days due to sickness even though, that part has not been taken into account and service has been terminated by the petitioner Corporation. According to the petitioner Corporation, service of the workman was terminated because his work was not found satisfactory. The labour court has observed that after appointment on 5th May, 1978, the workman remained in service for one year and thereafter, he was appointed in the post of Art-B Painter on probation with effect from 30th March, 1979. The record was not produced by the Corporation before the labour court and on that basis, the labour court has come to the conclusion that in absence of the record which are in possession of the petitioner Corporation, it is not proved before the labour court that the workman was appointed for a period only for one year on probation.

One letter was sent by the Divisional Controller to the workman dated 2nd May, 1978 where the respondent workman was selected in the post of Art-B Painter by Divisional Office, Amreli. That said letter was received by the workman and the xerox copy thereof, has been produced on record by the workman. The provident fund of the workman was deducted on 20th August, 1979 and therefore, the contention raised by the Corporation has not been believed by the labour court on the ground that there was no evidence produced by the petitioner Corporation. The workman had worked for a period from 5th May, 1978 upto the date of termination 26th March, 1980. The Corporation has also not produced any satisfactory evidence that the workman was appointed on probation period and his work was not found to be satisfactory and that is how the termination order has been passed. Therefore, the labour court has come to the conclusion that in absence of the documentary evidence and that contention has not been proved by the petitioner Corporation and as such, there is no evidence produced on record by the Corporation that on what basis, his work was not found to be satisfactory. Ultimately,the labour court has come to the conclusion that termination order is passed by the Corporation without following any procedure in law and not following the procedure of holding the departmental inquiry against the workman and even no notice has been given to the workman prior to termination. Therefore, termination order is found to be illegal and contrary to the principles of principles of natural justice. Ultimately, the labour court has come to the conclusion that termination is bad and the workman is no entitled to full backwages with effect from 1979 but entitled from 1st January, 1990. Therefore, the order, to that effect, has been passed by the labour court on 1st May, 1999, under challenge made by the petitioner Corporation before this Court.

#. It is pertinent to note that in the present petition, the Corporation has produced on record the termination order dated 26th March, 1980 which was not produced before the labour court. Therefore, such order cannot be looked into by this Court when the same was not produced before the labour court. The statement of claim was filed by the workman on 8th February, 1995 and written statement was filed by the Corporation and thereafter, on 22nd January, 1999 the corporation has filed written statement before the labour court. The workman came to be appointed vide order dated 8th April, 1978 which is at page.45 as Art-B Painter with effect from 30th March, 1979.

#. The termination of the workman is dated 26th March, 1980 and the dispute was raised by the workman in the year 1984 which came to be referred for adjudication on 24th May, 1984. Therefore, the order which has been passed by the labour court on 1st May, 1999, atleast after 15 years as the Reference remained pending before the labour court for final adjudication. Looking to the facts on record, the workman who has filed the statement of claim after 11 years that is in the year 1995. Therefore, when the workman has not taken any step to proceed with the Reference immediately well in time after referring the dispute for adjudication and the statement of claim has been filed after 11 years, for such negligence, the workman is not entitled to any amount of backwages of the said period. Even that aspect has been taken into account by the labour court while considering the question of backwages. So far the finding given by the labour court setting aside the termination order, the labour court has rightly set aside the termination order on the ground that the workman was found to have appointed on 5th May, 1978 and his service was terminated on 26thMarch, 1980 on the ground of inefficiency. Therefore, this being stigma attached to the termination order and for that, no departmental inquiry was initiated by the petitioner Corporation against the respondent workman. It is not even the case of the petitioner corporation that before terminating service of the workman, departmental inquiry was initiated or any opportunity was given to the workman on the ground that his work was not found to be satisfactory by the Corporation. Even otherwise, if according to the Corporation, it is simple termination then also, service of the workman was terminated being simpliciter termination and not by way of disciplinary action, then also, such termination comes within definition of Section 2[oo] of the Industrial Disputes Act, 1947 being retrenchment and in that case, retrenchment procedure must have to be followed by the Corporation before terminating service of the workman. In the facts of this case, undisputedly, Section 25-F of the Act has not been followed by the petitioner Corporation. Therefore, it is obvious that on both the grounds, termination order has been rightly set aside by the labour court, for that, according to my opinion, the labour court has not committed any error while passing such award. Therefore, finding of that labour court on this count is not vitiated and perverse and the same is confirmed by this Court so far it relates to grant of reinstatement with continuity of service.

#. Now the question regarding grant of backwages by the

labour court with effect from 1st January, 1990 and whether the labour court has rightly granted the full backwages with effect from 1st January, 1990 or not. To come to the conclusion on the question of quantum of backwages, this Court consider that the termination date is 26thMarch, 1980 and the matter was referred for adjudication on 24th May, 1984 and the statement of claim was filed on 8th February, 1995. Before the labour court, unless and until the statement of claim is filed by the workman, Reference would not proceed further and it was the first required step for proceeding the Reference further and that step has not been undertaken timely by the workman and as a result thereof, the Reference remained pending for eleven years before the labour court for no fault on the part of the petitioner Corporation, naturally, the workman is not entitled to any amount of backwages on account of his negligence not to file statement of claim before the labour court well in time. After filing of the statement of claim, the labour court has taken a period of four years to decide the matter finally. So in all, from the date of termination, 19 years have past and from the date of Reference, 15 years have passed. Considering the fact that after all, the workman had completed only two years service though it was not admitted by the Corporation. In light of this background, whether it is proper and justified to grant full backwages with effect from 1st January, 1990 or not, because after all, the petitioner corporation is also State Authority and ultimately, the burden upon the public exchequer. Therefore, the question is whether the workman is entitled to backwages or not and if yes, what should be backwages deserved to be awarded to the workman, requires to be considered by this Court. Therefore, in light of the factual background which is not disputed between the parties and considering the ratio laid down by the Apex Court in case which is referred to as under, wherein, the Reference was pending before the labour court, for about 33 years, if the labour court has granted full backwages and ultimately that question was examined by the Apex Court coming to the conclusion that termination order is bad and the workman is entitled to full backwages as a matter of right but looking to the fact and circumstances of the case and pendency not at the fault of either party and therefore, the Apex Court has considered all these aspects and the long pendency before the labour court, ultimately, granted 50 % backwages of the interim period. This aspect has been examined by the Apex Court in case of MANAGEMENT OF M.C.D. V. PREM CHAND GUPTA reported in AIR 2000 SC 454, wherein, the Apex Court is not inclined to uphold the full backwages on the ground that it will

be harsh for the statutory corporation to pay full backwages after passage of 33 years since order of termination. The relevant observations made by the Apex Court in para-19 are referred as under :-

"19. The reasons for non-granting full backwages from the date of his termination on 29.4.1966 till actual re-instatement pursuant to the present order can now be indicated. Firstly, for no fault of the contesting parties, the litigation has lingered on for more than three decades. The termination order was as early as on 29.4.1966 and after 33 years and more it is being set aside. To saddle the appellant corporation and its exchequer, which is meant for public benefit, with full back-wages for entire period would be too harsh to the appellant Corporation. It is the delay in disposal of cases in the Courts that has created this unfortunate situation for both the sides. Respondent workman is also not at fault as he was clamoring for justice for all these years. However, this delay in Court proceedings for no fault of either side permits us not to burden the appellant Corporation, being a public body, with the full backwages for the entire period of respondent workman's unemployment, especially when for no fault of either side actual work could not be taken from the respondent workman by the appellant Corporation. It is true that the respondent workman was always wiling to work but he could not be permitted to work so long as the termination order stood against him. The Labour Court as well as the learned Single Judge upheld that order. Only the Division Bench set aside that order. This Court at SLP stage itself while granting leave stayed reinstatement order on 17.11.1997. Two more years since elapsed during the pendency of this appeal before this Court. All these factors together point in the direction of not saddling the appellant-Corporation, a public body, with the burden of entire full backwages to be granted to the respondent workman after the passage of 33 years since his order of termination. The second reason is that the respondent workman for all these years could not have remained totally unemployed though there is no clear evidence that he was gainfully employed and was so well off that he should be denied complete backwages. But keeping in view the fact that for all these long years fortunately the

respondent workman had survived and has still two more years to reach the age of superannuation as we are told, no granting him full backwages on the peculiar facts of this case, would meet the ends of justice. We, therefore, following order :

1. The impugned order of Division Bench of the High Court insofar as it holds that the termination order of the respondent workman dated 29.4.1966 was violative of Rule 5 of the relevant Rules is set aside.

2. However, the final order passed by the High Court ordering reinstatement of the respondent workman with continuity of service is upheld on the alternative ground holding termination of services of the respondent workman on 29.4.1966 to be violative of Section 25-F of the I.D.Act.

3. So far as backwages are concerned, the impugned order of the High Court is modified by directing that the respondent workman will be entitled to get 50 % backwages from the date of his termination i.e. from 29.4.1966 till his actual reinstatement in service of the appellant Corporation with continuity of service. The respondent workman will also be entitled to all other consequential benefits including increments in the available time scale and revisions of the time scale, if any, and also further service benefits as per the rules and regulations of the appellant corporation being treated to have been in continuous service of the appellant Corporation from 29.4.1966 all through out till reinstatement. The appellant Corporation shall reinstate the respondent workman with continuity of service within 8 weeks from today and will also pay 50 % backwages as directed hereinabove within that period. The appellant corporation will also grant all other consequential benefits to the respondent workman in the light of this judgment. Appeal stands allowed as aforesaid with no order as to costs in the facts and circumstances of the case."

##. I have considered the observations made by the Apex Court in para-19 referred to above and also applied to the facts of this case on hands. Looking to the factual background, it has come on record that termination was in

the year 1980, dispute was raised in the year 1984 and not filed statement of claim for 11 years upto 1995 and the matter remained pending for 15 years before the labour court, almost there being fault on the part of the workman and no fault of the petitioner Corporation and the petitioner corporation being public body ultimately burden upon the public exchequer and considering two yeas service of the workman and the technical breach of non compliance of Section 25-F of the I.D.Act and non compliance of principle of natural justice. Therefore, according to my opinion, bearing in mind the entire facts and circumstances of the case, the full backwages granted by the labour court with effect from 1st January, 1990 is reduced to 50 % backwages with effect from 8th February, 1995 till the date of actual reinstatement, will meet the ends of justice between the parties. Therefore, the labour court has committed gross error in granting full backwages with effect from 1st January, 1990 and that is how, that part of direction is required to be quashed and set aside while confirming the direction of granting reinstatement with continuity of service.

##. In the result, present petition is partly allowed while confirming the direction granted by the labour court of reinstatement with continuity of service and backwages is reduced and accordingly, the workman is entitled only to 50 % backwages with effect from 8th February, 1995 till the date of award 1st May, 1999.

Rule is made absolute to the extent indicated above.

##. At this stage, learned advocate Mr.Pathak has submitted that backwages has been reduced by this Court for a period from 8th February, 1995 to the date of award i.e. 1st May, 1999 and the workman is not entitled to any backwages of the interim period from the date of termination till 8th February, 1995 and therefore, he submits that from the date of award, the workman is entitled to reinstatement, which is denied to him because of the interim order passed by this Court. He also submitted that benefit under Section 17-B of the I.D.Act has also not been paid to the workman from the date of award by the petitioner Corporation. It is also submitted that the respondent workman has been reinstated in service by order dated 13th July, 2001 and therefore, submission is, the workman is entitled to full salaries with effect from 1st April, 1999 till the date after adjusting the whatever amount has been paid by the petitioner Corporation to the workman. Therefore, learned advocate Mr.Pathak submits that some suitable

directions may be issued on the petitioner corporation in respect of the payment of backwages as well as further wages from the date of award.

Having regards to the submissions and request made by the learned advocate Mr.Pathak and considering the fact that the workman is entitled to regular wages from the date of award till the date of actual reinstatement. Therefore, it is directed to the petitioner Corporation to pay full wages to the respondent workman from the date of award i.e. 1st May, 1999 till the date of actual reinstatement and if the workman has not been paid regular salary, then the Corporation shall pay the difference of salary between the last drawn monthly wages and the regular salary to the workman for the period for which the workman has been paid last drawn monthly wages by the petitioner Corporation. The petitioner Corporation shall make all the payments directed above to the petitioner within three months from the date of receiving the copy of this order and further directed to pay 50 % backwages to the respondent workman for the period from 8th February, 1995 to 1st May, 1999 within one from the date of receipt of copy of this order.

Since this Court has disposed of the main matter while partly allowing the same, no further order requires in Civil Application No.7732 / 2003 and therefore, the same also stands disposed of accordingly.

No order as to costs.

Date : 4.12.2003 [H.K.Rathod, J.]

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